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Supreme Court, U.S.
FILED

APR 3 2003

OFFICE OF THE CLERK

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL JACOBSON,

Petitioner

v.

SOLID WASTE AGENCY OF NORTHWEST NEBRASKA
S.W.A.N.N.

On Petition For Writ of Certiorari
To The Supreme Court of the State of Nebraska

PETITION FOR WRIT OF CERTIORARI

MICHAEL JACOBSON
PRO SE
613 NORTH ASH STREET
GORDON, NEBRASKA 69343
308-360-0963

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QUESTIONS

1. **Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate that SWANN's regulation did not regulate interstate commerce and impermissibly discriminate against interstate commerce?**

2. **Was it an abuse of discretion for the Nebraska Supreme Court to PRESUME that Plaintiff was guilty of using "service" or being a nuisance?**

3. **Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate that SWANN has jurisdiction inside Plaintiff's home?**

4. **Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate the "Act" could be held to destroy itself?**

TABLE OF AUTHORITIES

CASES:

Wyoming v. Oklahoma, 502 U.S. 437, 454 (1992)

Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't. of Natural Resources, 504 U.S. 353, 359 (1992)

H.P. Hood & Sons, Inc v. DuMond, 336 U.S. 525, 535 (1949)

C & A Carbone, Inc., 114 S. Ct. at 1682

Sporhase v. Nebraska ex. ret. Douglas, 102 S. Ct. at 1263

Texas & Pacific R.C. v. Abilene Cotton Oil Co., 275 S. Ct. 350, 358

STATUTES:

NEB.REV.STAT. section 25 - 21, 150

NEB.REV.STAT. section 12-2020(4)

NEB.REV.STAT. section 13-2020(4)

NEB.REV.STAT. section 13-2000

NEB.REV.STAT. 13-2002(4) AND (7)(a)

NEB.REV.STAT. 13-2018 (a)

NEB.REV.STAT. 81 -15, 166(1)

NEB.REV.STAT. 28 - 1321

NEBRASKA & U.S. CONSTITUTION

U.S. Const.art I sec. 8 cl. 3

U.S. Const Amend. 5, 14

Nebraska Constitution Article I, Sec. 3 and Sec. 7

JURISDICTION

The Nebraska District Court of Dawes County in response to Plaintiff's Petition for a Declaratory Judgment Neb. Rev. Stat. Section 25-21, 150 and a Motion for Summary Judgment appears at Appendix A, entered on the 30th day of April, 2001 a Decision and Judgment in Plaintiff's favor that appears at Appendix B.

Stipulation plus receipts that appears as Appendix C

A timely appeal was perfected to the Nebraska Supreme Court by the Defendant. The Nebraska Supreme Court rendered a decision against Plaintiff on November 22, 2002; appearing at Appendix D.

A timely petition for rehearing was denied by the Nebraska Supreme Court on January 3, 2003, as appears in Appendix E.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

STATEMENT OF THE CASE

This petition for review concerns the Nebraska Supreme Court interpretation of LB 1257, Integrated Solid Waste Management Act (hereinafter "the Act") Article 20 of Chapter 13 of the Nebraska Statutes enacted in 1992, with the stated intent by the Nebraska Legislature to reduce the amount of garbage at its source.

Pursuant to Sections 13-801 to 13-827 of R.R.S. Neb. 1943 as amended (the "Interlocal Cooperation Act") on October 5, 1992 the Solid Waste Agency of Northwest Nebraska (hereinafter SWANN) was created.

On October 1, 1993 SWANN began billing Plaintiff at 613 N. Ash Street, Gordon, NE 69343 for alleged garbage service. On March 20, 1997, Plaintiff appeared before SWANN's Board of Directors and testified that he does not utilize, nor has he utilized in the past, the service of SWANN, either for the pickup, removal or disposal of any solid waste. Shortly thereafter SWANN converted Plaintiff's bill into a tax. This "special tax" of $879.95 was accepted by the Sheridan County Treasurer of the State of Nebraska and assessed as a lien against Plaintiff's legal address and home.

Very shortly thereafter a tax sale was held by the Sheridan County Treasurer in the amount of $879.95. The First Union National Bank of Miami, Florida bought the tax lien for that amount at 14% interest. After 3 years, the Bank had 6 months to foreclose on "their investment".

In response to *Village of Winside* 553 N.W.2d 476, (1996), in 1997 an amendment was incorporated by the Nebraska

legislature into section 13-2020(4) to more clearly define when a premises is served by a solid waste collection system .

On January 21, 1999 SWANN issued Ordinance / Resolution No. 1999-01, which, among others, stipulated a requirement set out in Part E of 4.05: "The solid waste generator shall submit at least two (2) receipts monthly from the alternate permitted facility."

On November 17, 1999, Plaintiff filed his initial Petition for Declaratory Judgment requesting the court to discharge any alleged liability of Plaintiff.

Because of SWANN's aversion to a court of law, on May 18, 2000 SWANN's Board of Directors passed Resolution 2000-16 which wrote off Plaintiff's alleged garbage bill up to January 21, 1999.

REASONS FOR GRANTING THE PETITION

QUESTION #1

Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate that SWANN's regulation did not regulate interstate commerce and impermissibly discriminate against interstate commerce?

The regulation requiring private market participants to use the Pine Ridge Landfill twice a month are a poorly disguised attempt to make use of Pine Ridge Landfill unduly burdensome and expensive. The regulation is intended to drive up the costs

of using an alternative, out of state facility. It must be remembered SWANN did not enact this rule until 7 years after its inception, and gave no public reason why they enacted it. Moreover, the Nebraska Supreme Court admitted to economic protectionism in its decision.

The commerce clause gives to Congress the authority "(to) regulate Commerce . . . among several States. . ." U.S. Const. art. I sec. 8, cl.3 this grant of authority to the Congress is at the same time a self-executing limitation on the powers of the states to regulate such commerce, (thus the negative or "dormant" aspect of the clause), Wyoming v. Oklahoma, 502 U.S. 437, 454 (1992), and that limitation prohibits states from advancing their local commercial interests by "curtailing the movement of articles of commerce into or out of the state," Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't. of Natural Resources, 504 U.S. 353, 359 (1992) (quoting H.P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 535 (1949), or within the state's subdivisions, even in the absence of affirmative action by the Congress. The Supreme Court has concluded that garbage or the services associated with garbage, such as its processing and disposal, are articles of commerce within the meaning of the commerce clause. C & A Carbone, Inc. 114 S. Ct. at 1682. As a result, actions taken by states that tend to interfere with the flow of these services are subject to scrutiny by courts.

SWANN violates the commerce clause in the most basic way by determining that Plaintiff must pay for SWANN's alleged service, that Plaintiff did not request, does not use, does not want, because Plaintiff has taken steps to reduce his garbage at the source. Further, SWANN converted the alleged garbage bill into a "special tax" and threatened to sell his home. Currently the Plaintiff has the choice to move to South Dakota,

or give up his constitutional rights and pay for a service that he does not need

QUESTION #2

Was it an abuse of discretion for the Nebraska Supreme Court to PRESUME that Plaintiff was guilty of using "service" or being a nuisance?

The Nebraska Supreme Court did not cite any case law to support this unconstitutional opinion. Does the United States Constitution Due Process Amendment not demand that Plaintiff is innocent until proven guilty? The Nebraska District Court recognized 20 receipts of payment but the Nebraska Supreme Court, in their zeal to protect SWANN only saw 13. The 20 receipts meet the burden of proof set by the Nebraska Legislative history, but the court refused to accept receipts. Statutes creating rebuttable presumption have long been disfavored under Due Process clauses of Fifth and Fourteenth Amendments. U.S.C.A.Const. Amends. 5, 14.

The Nebraska Supreme Court's argument that this regulation is needed somehow to protect public health is without merit. As the Nebraska District Court adjudicated that Nebraska's nuisance laws are more reasonable which prohibits the creation of a nuisance. Neb. Rev. stat. 28-1321. The Act dictates three years and six months to correct a nuisance" . .and a town has a number of non-discriminatory alternatives for addressing health and environmental problems alleged to justify ordinances, such as uniform safety regulations enacted without object to discriminate. U.S.C.A. Const. Act 1 Section 8, cl.3. C & A Carbone v. Town of Clarkstown, N.Y. 114 S. Ct at No.4 page 1678. The Nebraska Supreme Court's claim to all solid waste

generated in Nebraska is based on "legal fiction of State ownership." Sporhase v. Nebraska ex. ret. Douglas 102 S. Ct. at 1263.

QUESTION #3

Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate that SWANN has jurisdiction inside Plaintiff's home?

If, how, when Plaintiff produces solid waste inside his own home is not a concern of Defendant. It is not garbage until Plaintiff relinquishes ownership.

Plaintiff pays for whatever is brought in the front door of his home. Whatever he discards out the back door of his home and hauls immediately to the Federal waste site in South Dakota, in his 1978 T-Bird, is his responsibility. Plaintiff earned a B.A. in Chemistry and is qualified to manage his own garbage inside his home.

This violates Nebraska Constitution, Article I, Sec. 7, "The right of people to be secure in their persons, houses, papers, ..."

QUESTION #4

Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate the "Act" could be held to destroy itself?

SWANN's Regulations are arbitrary and capricious because they discourage parties from reducing solid waste at the source, which is a primary objective of the Act. "It is an elementary

rule of construction that act cannot be held to destroy itself" Texas & Pacific R. C. v. Abilene Cotton Oil Co. 275 S. Ct. 350, 358.

CONCLUSION

Plaintiff asks the Court to consider what sins are required to enable the government to sell his home. Plaintiff has always hauled his solid waste to another state. He does refuse to pay for a service that he does not need, and which is arbitrarily forced on residents of SWANN's jurisdiction.

Have Plaintiff's constitutional rights been extinguished? For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Jacobson

Michael Jacobson

4/3/03

Date

s/Paul D. Empson District Judge
Paul D. Empson District Judge

On April 30, 2001, copies of this order were mailed to the parties or their attorneys.

s/Mace McGinley
Clerk of the District Court

APPENDIX C

IN THE DISTRICT COURT OF
DAWES COUNTY, NEBRASKA

MICHAEL JACOBSON	)	**CASE NO. C199 166**
Plaintiff,	)	
	)	
vs.	)	
	)	
SOLID WASTE AGENCY	)	**STIPULATION**
NORTHWEST NEBRASKA,	)	
SWANN Defendant	)	

COMES NOW the Plaintiff and the Defendant by and through its undersigned attorney, and make this stipulation for the purpose of submitting issues and an agreement upon facts for disposition of the Plaintiff's motion for summary judgment.

The parties stipulate and agree as follows:

1. The Plaintiff has files an "Amendment to the Petition for Declaratory Judgment" which is the Plaintiff's third amended petition. The Defendant has filed its "Answer to Plaintiff's Third Amendment to the Petition for Declaratory Judgment". The Plaintiff has alleged that the Rules and Regulations created and passed by the Defendant, January 21, 1999 are not binding upon the Plaintiff and are not enforceable as applied to the Plaintiff for the purpose of requiring the Plaintiff to pay Defendant's rates and charges assessed against the Plaintiff and the Plaintiff's premises for solid waste management, collection and disposal. The parties agree

that a true copy of the Rules and Regulation of the Defendant Agency are attached hereto marked Exhibit "A".

2. The parties agree that the Plaintiff denies that he has utilized in the past, the services of the Defendant Agency either for pick up, removal or disposal of any solid waste, and especially for that period commencing January 1, 1999 and through the date of this stipulation.

3. The parties agree that in support of the Plaintiff's claim that he does not utilize the services of the Defendant Agency for solid waste collection, transportation and disposal, the Plaintiff would offer evidence in the form of receipts, copies of which are attached hereto marked as Exhibit "B".

4. The parties agree that the Plaintiff would testify under oath that he ahs not utilized the services of the Defendant Agency for solid waste collection, transportation or disposal from and after January 21, 1999 to the present. The parties agree that the Defendant would testify under oath that he collects and transports all of his solid waste personally to an alternate solid waste land fill located on the Pine Ridge Indian Reservation and owned and operated by the Oglala Lakota Nation, Pine Ridge, South Dakota.

5. The parties further stipulate and agree that the Plaintiff does not comply with the Defendant's Rules and Regulations by:
   a. Providing the written statement required by Rules and Regulations of the Defendant Agency set forth in Section 4.05 (B); and

   b. Plaintiff does not provide the required receipts

as provided and required by the Rules and Regulations of Defendant Section 4.05(E).

6. The Plaintiff and the Defendant further stipulate and agree that the following facts may be accepted by the Court as true:

   a. The Plaintiff is a resident of Sheridan County, Nebraska and a sole resident (tenant) of the property more specifically described as follows: 613 North Ash Street, Gordon, Nebraska (N15'Lot 8, Pt. of Lot 9, Block 40, Original Town of Gordon, Sheridan County, Nebraska;

   b. The Defendant is an entity with its principal place of business in Chadron, Nebraska, being a political subdivision created under the Nebraska Interlocal Cooperation Act, NEB.REV.STAT δ13-801 to 13-827 and the Integrated Solid Waste Management Act, NEB.REV.STAT. δ13-2001 et seq.;

   c. The City of Gordon, Sheridan County, Nebraska is a member of the Defendant entity, Solid Waste Agency of Northwest Nebraska, and the Plaintiff's residence is located within the jurisdiction of the Defendant entity and the City of Gordon, Sheridan County, Nebraska;

   d. The Defendant entity was formed for the purpose of management, collection, disposal, and recycling of solid waste within the jurisdiction of the Defendant entity;

   e. The Defendant entity as part of its official functions, picks up and disposes of our receives

solid waste in each of its member jurisdictions;

f. The parties agree that the Defendant Agency offers and provides generally the following services and benefits within each of the member jurisdictions:

i. Solid waste disposal dumpsters and solid waste containers are provided for private and/or commercial use.

ii. The Defendant has provided and offered collection and pick up of solid waste for dumpsters and individual solid waste containers bi-weekly; and special pick up arrangements for residential customers at no charge.

iii. Green dumpster collection for yard waste and composting are provided by Defendant to persons residing within the jurisdiction.

iv. The Defendant provides recycling services and benefits to persons residing within the jurisdiction.

v. Defendant promotes and provides summer youth education for all persons within the jurisdiction including Scout groups, etc.

vi. Defendant provides community event collection services, and including community events.

vii. The Defendant provides containers for city-wide cleanup activities and Defendant further maintains and provides alley cleanup.

viii. Defendant provides a community solid waste drop off location for each community within the Defendant's jurisdiction including the jurisdiction.

ix. Defendant provides public education presentations regarding solid waste

management, collection and disposal.

x. The Defendant co-sponsors hazardous materials collection day and assists and provides in disposal of hazardous waste at an alternate facility.

xi. The Defendant offers and provides a paint drop and swap program within its jurisdiction.

xii. The Defendant provides assistance and grant writing for municipal projects including the municipality of Gordon, Nebraska.

xii. The Defendant provides crushed concrete for the use of municipalities and specially for the Gordon alley improvement project.

xiii. The Defendant provides assistance and grant writing for municipal projects including the municipality of Gordon, Nebraska.

xiv. The Defendant provides special disposal sites and assistance for natural disasters.

7. The parties further stipulate and agree that from and after January 21, 1999, the Defendant Agency has regularly billed the Plaintiff for solid waste collection, transportation and disposal services at the rate of $14.80 per month and there is claimed owing to the Defendant Agency by the Plaintiff, the sum of $382.29 as of November 1,2000.

DATED this 23rd day of January, 2001.

SOLID WASTE AGENCY OF NORTHWEST NEBRASKA,
Defendant

By s/ *Dennis D King*
Dennis D. King, NSBA #12220
One of Defendant's Attorneys
SMITH AND KING, P.C.
P.O. Box 302
Gordon, NE 69343-0302
Telephone: 308-282-0690
Facsimile: 308-282-1029

DATED this 23rd day of January, 2001

s/ Michael Jacobson
Michael Jacobson, Plaintiff

BEST AVAILABLE COPY

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: ~~4~~ 10/30 19 99

Customer's
Name Michael Jacobson
Address 613. N. Ash
Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
4/30	3 garbage bags cash	5 00
		5 00

No 2112 Rec'd by. alh

OGLALA LAKOTA NATION
Solid Waste Management
PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 10/21 19 99

Customer's
Name Michael Jacobson
Address 613 N. Ash
Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	user fee's for May 1999 & June 1999.	$10 00
		$10 0

No 2249 Rec'd by. alh

OGLALA LAKOTA NATION
Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 10/21 19 99

Customer's
Name Michael Jacobson
Address 613 N. Ash
Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	10 bags of garbage cash	5 00
		$ 5 00

No 2248 Rec'd by. Alh

613 North Ash
Gordon NE 69343

11-23 [illegible] 1999

RECEIVED FROM Michael Jacobson

five and 00/100 DOLLARS

$3 bags of trash

Account Total $ $5.00 cash Solid Waste Mgmt

Amount Paid $ [illegible]

Balance Due $ [illegible]

Martha Protestor

THE EFFICIENCY LINE AN AMPAD PRODUCT

JUDE

12-23-99

Vince Talbert

$5.00

613 North Ash
gordon NE

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 12-23 19 99

Customer's
Name Michael Jacobson
Address 613 North Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
12/23	bags of trash	5 00
		5.00

№ 2511 Rec'd by mc

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 1-31 2000

Customer's
Name Michael Jacobson

Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
1/31	bags of trash	5 00
		5.00

№ 2512 Rec'd by mc

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 2-29 ~~2000~~

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE RECD	DESCRIPTION	AMOUNT
2/29	bags of trash	5.00
		5.00

№ 2513 Rec'd by.

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 3/31 ~~2000~~

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE RECD	DESCRIPTION	AMOUNT
	Trash	5.00
	Cash	
		5.00

№ 2547 Rec'd by: mp

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 5-11 2000

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE. 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Trash for April 2000	5 00
		5 00

№ 2621 Rec'd by: MP

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 5-11 2000

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Trash for May 2000	5 00
		5 00

№ 2620 Rec'd by: MP

Solid Waste Management
PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 1/22 19 2001

Customer's Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Oct 2000	5 00
	Nov 2000	5 00
	Dec. 2000	5 00
		15 00

№ 2714 Rec'd by

Solid Waste Management
PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 , FAX (605) 867-1464

date: 1/22 19 2001

Customer's Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE Rec'd	DESCRIPTION	AMOUNT
	January 2001	5
	3 bags garbage	
		5 00

№ 2715 Rec'd by